

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE
No. 04-239

CASE NO. SC05-851

JUDGE RICHARD H. ALBRITTON, JR.
_____ /

MOTION TO COMPEL

COMES NOW, the Honorable Richard H. Albritton, Jr., by and through his undersigned counsel and hereby files this Motion to Compel requesting the Hearing Panel to order Special Counsel to produce the witness interviews conducted by the Judicial Qualifications Commission and in support, sets forth the following facts and argument.

FACTS

1. Respondent filed his Demand for Rule 12(b) Materials on July 28, 2005. (See Demand for Rule 12(b) Materials, attached as Exhibit A).
2. Special Counsel filed its Response to Demand for Rule 12(b) Materials on August 19, 2005, and forwarded transcripts of testimony given by Judge Albritton dated February 11, 2005 and July 27, 2001, as well as transcripts of testimony given by Shayma Salmon, Melissa Bowers, Sandra Childers, Sandra Atkins, Peggy Roell, Tara Melton, Richard Dale Ogburn, and John A. Williams

dated July 27, 2001. Only Tara Melton, Peggy Roell and John Williams are listed in the JQC's witness list of twenty-four witnesses. (See Response to Demand for Rule 12(b) Materials, attached as Exhibit B).

3. On September 20, 2005, the undersigned counsel wrote to Special Counsel and requested the witness' statements of the remaining twenty-one witnesses that are expected to offer testimony on behalf of the JQC at the Formal Hearing. (See letter dated September 20, 2005 from Scott K. Tozian, Esquire, to David T. Knight, Esquire, attached as Exhibit C).

4. On September 21, 2005, Special Counsel, David T. Knight, Esquire, responded to the request for witness statements and indicated that he was in possession of summaries of interviews taken by an investigator hired by the JQC, but claimed the documents were privileged and refused to produce them. (See letter dated September 21, 2005 from David T. Knight, Esquire, to Scott K. Tozian, Esquire, attached as Exhibit D).

5. After several good faith, but unsuccessful, attempts to subsequently request Special Counsel to furnish the statements as required by Rule 12(b), Respondent files this Motion to Compel. (See letters dated September 26, 2005 and September 28, 2005, attached as Composite Exhibit E).

ARGUMENT

Judge Albritton's entitlement to all witness statements used to find probable cause is well established. Florida Judicial Qualifications Commission Rule 12(b) requires Special Counsel to "promptly furnish" the responding judge with "copies of all written statements and transcripts of testimony" of any witness whom Special Counsel expects to call at trial. The Florida Supreme Court has held that "discovery pursuant to Rule 12(b) allows an accused judge to have full access to the evidence upon which formal charges are based." In re Graziano, 696 So. 2d 744, 751 (Fla. 1997). In fact, the Graziano Court determined that these liberal discovery rights justified the continuing confidentiality of the original complaint. Id. at 751-52.

The Florida Supreme Court reiterated Special Counsel's obligation enunciated in Graziano under strikingly similar circumstances in the JQC proceeding against Cynthia A. Holloway, Inquiry Concerning a Judge, Cynthia A. Holloway, No. 00-143, Supreme Court Case No. SC00-2226. Specifically, the Florida Supreme Court determined that witness statements made to the JQC's investigator must be provided to the accused judge if the statements or statement summaries were used to find probable cause. In Holloway, Special Counsel refused to turn over summaries of witness statements made to the JQC investigator, claiming that the summaries were privileged. As a result, Judge Holloway filed a

Motion to Compel with the Hearing Panel which was denied. (See Motion to Compel, dated January 31, 2001 and the Hearing Panel's Order on the Motions for Protective Order and to Compel, dated February 20, 2001, attached as Composite Exhibit F). Thereafter, Judge Holloway filed her Motion to Compel with the Florida Supreme Court on February 21, 2001. (See Motion to Compel, attached as Exhibit G). On February 22, 2001, the Supreme Court requested the JQC to file a response within one working day to the respondent's Motion to Compel. (See Order of the Supreme Court, dated February 22, 2001, attached as Exhibit H).

The JQC filed a nine-page response arguing that the witness statements were prepared in anticipation of litigation, and were thus protected by the work-product doctrine. In addition, Special Counsel asserted that the witness' statements to the JQC's investigator and the resulting witness statements did not fall within the purview of Rule 12(b) because they were not "statements" as defined by Florida Rules of Civil Procedure. (See JQC's Motion in Opposition, dated February 23, 2001, attached as Exhibit I). The same day the JQC filed its response, the Florida Supreme Court entered its Order granting Judge Holloway's Motion to Compel and ordered the JQC to produce all statements used to determine probable cause. (See Order dated February 23, 2001, attached as Exhibit J).

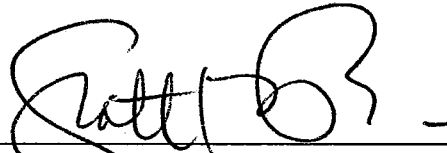
Special Counsel now raises the identical objections that were previously asserted when the JQC refused to disclose the witness summaries in Judge Holloway's case. Just as the Florida Supreme Court rejected the JQC's objections and ordered the JQC to produce all statements used to determine probable cause, so too should the Hearing Panel compel Special Counsel to promptly furnish the witness statements that are being withheld.

Special Counsel should at least have a fundamental understanding of the basic due process rights afforded to an accused judge. As such, Special Counsel should acknowledge that an accused judge is entitled to review witness statements that were used to find probable cause. Moreover, Special Counsel has reviewed and considered the Court's orders in Graziano and Holloway. (See Composite Exhibit E). However, Special Counsel has steadfastly refused to furnish the witness statements to Judge Albritton despite its clear responsibility to do so under Florida Judicial Qualifications Commission Rule 12(b) and Florida Supreme Court precedent.

Instead of receiving the witness statements from Special Counsel as a routine discovery matter, the JQC has forced Judge Albritton to incur attorneys' fees to enforce its entitlement to review evidence upon which the Investigative Panel found probable cause. At best, this tactic is unprofessional. At worst, it demonstrates the JQC's lack of regard for an accused judge's rights. It is

respectfully requested that the Hearing Panel issue an order compelling the disclosure of all witness statements and requiring Special Counsel to reimburse Judge Albritton for the attorneys' fees that he has unnecessarily incurred in enforcing his right to review the evidence which the JQC has already considered in finding probable cause.

Respectfully submitted,



SCOTTK. TOZIAN, ESQUIRE

Fla. Bar No. 253510

GWENDOLYN H. HINKLE, ESQUIRE

Fla. Bar No. 083062

SMITH, TOZIAN & HINKLE, P.A.

109 North Brush Street

Suite 200

Tampa, Florida 33602

(813)273-0063

Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of November, 2005, the original of the foregoing Motion to Compel has been filed via e-file@flcourts.org and furnished by DHL overnight delivery to:

Honorable Thomas D. Hall
Clerk
Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399-1927

with copies by U. S. Mail to:

Ms. Brooke S. Kennerly
Executive Director
Florida Judicial Qualifications Commission
1110 Thomasville Road
Tallahassee, Florida 32303

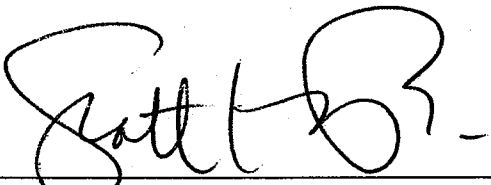
Judge James R. Wolf
Chairman, Hearing Panel
Florida Judicial Qualifications Commission
1110 Thomasville Road
Tallahassee, Florida 32303

John R. Beranek, Esquire
Counsel to the Hearing Panel
P.O. Box 391
Tallahassee, Florida 32302

Thomas C. MacDonald, Jr., Esquire
General Counsel
Florida Judicial Qualifications Commission
1904 Holly Lane
Tampa, Florida 33629

and

David T. Knight, Esquire
Special Counsel
Hill, Ward & Henderson, P.A.
P. O. Box 2231
Tampa, Florida 33601



SCOTT K. TOZIAN, ESQUIRE

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

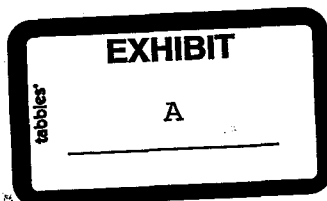
INQUIRY CONCERNING A JUDGE
No. 04-239

CASE NO. 04-239

JUDGE RICHARD H. ALBRITTON, JR.
_____ /

DEMAND FOR RULE 12(b) MATERIALS

COMES NOW, JUDGE RICHARD H. ALBRITTON, JR., by and through his undersigned counsel, and hereby makes written demand of the Florida Judicial Qualifications Commission and/or its counsel, pursuant to Rule 12(b) of the Rules of the Florida Judicial Qualifications Commission, of the names and addresses of all witnesses whose testimony Special Counsel expects to offer at the hearing, together with copies of all witness statements and transcripts of testimony of such witnesses in the possession



of the Counsel or the Investigative Panel which are relevant to the subject matter of the hearing.

Respectfully submitted,



SCOTT K. TOZIAN, ESQUIRE

Florida Bar No. 253510

GWENDOLYN H. HINKLE, ESQUIRE

Florida Bar No. 083062

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Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of July, 2005, the original of the foregoing Demand for Rule 12(b) Materials has been filed via e-file@flcourts.org and furnished by FedEx overnight delivery to:

Honorable Thomas D. Hall
Clerk
Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399-1927

with copies by U. S. Mail to:

Ms. Brooke S. Kennerly
Executive Director
Florida Judicial Qualifications Commission
1110 Thomasville Road
Tallahassee, Florida 32303

Judge James R. Wolf
Chairman, Hearing Panel
Florida Judicial Qualifications Commission
1110 Thomasville Road
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John R. Beranek, Esquire
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and

Thomas C. MacDonald, Jr., Esquire
General Counsel
Florida Judicial Qualifications Commission
1904 Holly Lane
Tampa, Florida 33629



SCOTT K. TOZIAN, ESQUIRE

AUG 22 2005

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

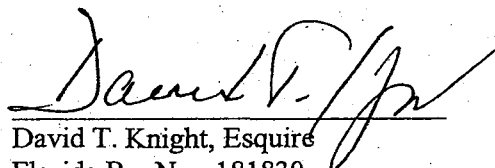
INQUIRY CONCERNING A
JUDGE, No. 04-239,

JUDGE RICHARD H. ALBRITTON, JR.

Florida Supreme Court
Case No. SC05-851

**RESPONSE TO DEMAND FOR
RULE 12(b) MATERIALS**

The Florida Judicial Qualifications Commission files herewith its response to the Demand of Judge Richard H. Albritton, Jr. for the matters to be disclosed pursuant to Rule 12(b) of the Rules of the Florida Judicial Qualifications Commission. All requested information, not privileged, will be provided.

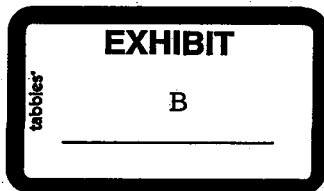

David T. Knight, Esquire
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Post Office Box 2231
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Special Counsel for the Florida Judicial
Qualifications Commission

and

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General Counsel for the Florida Judicial
Qualifications Commission



CERTIFICATE OF SERVICE

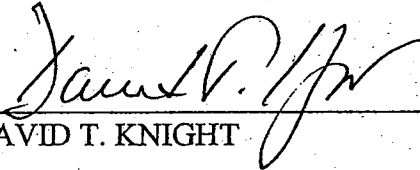
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by certified mail, return receipt requested this 19th day of August, 2005 to:

Scott K. Tozian, Esquire
Smith, Tozian & Hinkle, P.A.
109 North Brush Street, Suite 200
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Attorney for Judge Albritton

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Counsel to the Hearing Panel
Ausley & McMullen
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Brooke Kennerly
Florida Judicial Qualifications Commission
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Judge James R. Wolf,
Chairman, Hearing Panel
Florida Judicial Qualifications Commission
1110 Thomasville Road
Tallahassee, Florida 32303



DAVID T. KNIGHT

Special Counsel

Smith, Tozian & Hinkle, P.A.

ATTORNEYS AT LAW

DONALD A. SMITH, JR.
SCOTT K. TOZIAN
GWENDOLYN H. HINKLE
DEBRA J. DAVIS

September 20, 2005

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David T. Knight, Esquire
Special Counsel
Florida Judicial Qualifications Commission
Hill, Ward & Henderson, P.A.
P. O. Box 2231
Tampa, Florida 33601

Re: Judicial Qualifications Commission Case No. 04-239
Inquiry Concerning Judge Richard H. Albritton, Jr.

Dear Mr. Knight:

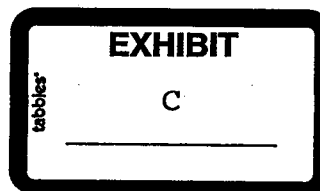
In reviewing the 12(b) materials previously provided to this office, I have discovered there are additional pages missing from your documents. The transcript provided in the Interest of Angel Pope starting at JQC Bates Number 284 is missing pages 8 through 12. Please note that page 7 is numbered JQC 290 and page 13 is numbered JQC 291. Please provide me with pages 8 through 12 at your first opportunity.

Additionally, you have provided us with a list of twenty-four witnesses who are expected to offer testimony at the final hearing. Of those twenty-four witnesses, we have been provided statements of Peggy Roell, Tara Melton and John A. Williams. We have received no statements from the remaining twenty-one witnesses. Obviously, these witnesses have given statements to the JQC insofar as it is their testimony which will support the thirty-six charges. Accordingly, I ask that you provide me with these witnesses statements at your first opportunity. The review of these statements may eliminate the need for taking depositions of each of the prosecution witnesses, thereby saving money for both Judge Albritton and the JQC.

I look forward to your prompt reply.

Sincerely,


Scott K. Tozian, Esquire



SKT/nlg

cc: Honorable Richard H. Albritton, Jr.

MAILING ADDRESS:
POST OFFICE BOX 2231
TAMPA, FLORIDA 33601-2231

LAW OFFICES OF
HILL, WARD & HENDERSON
PROFESSIONAL ASSOCIATION
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September 21, 2005

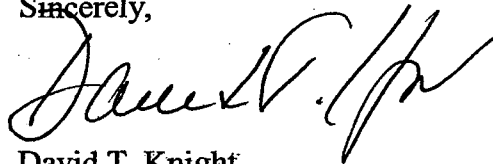
Scott K. Tozian, Esquire
Smith, Tozian & Hinkle, P.A.
109 North Brush Street, Suite 200
Tampa, Florida 33602

Re: Judicial Qualifications Commission, Case No. 04-239
Richard H. Albritton, Jr.

Dear Scott:

With respect to your September 20, 2005 letter, I will promptly look into the pages you have identified as missing and report back to you. With respect to witness statements, I have given you all that I possess. I do have summaries of interviews taken by an investigator hired by the Judicial Qualifications Commission, but those are privileged and will not be produced.

Sincerely,

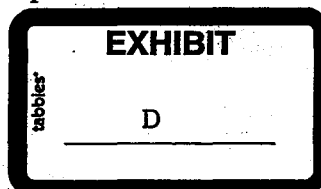


David T. Knight

*Special Counsel to the Judicial
Qualifications Commission*

DTK/lcc

cc: Thomas MacDonald, Esquire



Smith, Tozian & Hinkle, P.A.

ATTORNEYS AT LAW

DONALD A. SMITH, JR.
SCOTT K. TOZIAN
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September 26, 2005

David T. Knight, Esquire
Special Counsel
Florida Judicial Qualifications Commission
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P. O. Box 2231
Tampa, Florida 33601

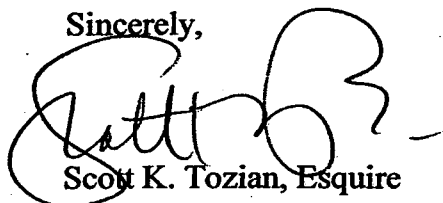
Re: Judicial Qualifications Commission Case No. 04-239
Inquiry Concerning Judge Richard H. Albritton, Jr.

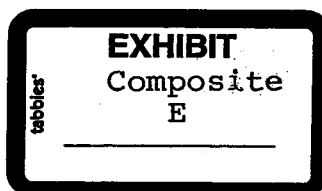
Dear Mr. Knight:

This will confirm our telephone conversation of this date wherein you requested that I provide dates for the taking of Judge Albritton's deposition. I advised you that I first wanted to resolve the issue of our entitlement to the witness summaries prepared by Mr. Butler or any other JQC representative. As I explained, I believe I am entitled to those witness summaries if they were relied upon by the JQC in finding probable cause. Since Judge Albritton was the only witness at the 6(b) hearing, it seems to follow that the summaries obtained by Mr. Butler formed the basis of the JQC moving forward with formal charges. The Supreme Court of Florida has previously required disclosure of witness statements that were considered in arriving at a probable cause finding. I am enclosing herewith a Motion to Compel we filed on behalf of the Honorable Cynthia A. Holloway, the JQC's Response and the Court's Order granting our Motion as to statements used in determining probable cause. Please let me know if it will be necessary for me to file a Motion to Compel with Judge Wolf in order to obtain these statements.

Thank you for your courtesy in this matter.

Sincerely,


Scott K. Tozian, Esquire



SKT/nlg

Enclosures: Per above

cc: Honorable Richard H. Albritton, Jr.

MAILING ADDRESS:
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AMPA, FLORIDA 33601-2231

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September 28, 2005

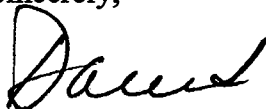
Scott K. Tozian, Esquire
Smith, Tozian & Hinkle, P.A.
109 North Brush Street, Suite 200
Tampa, Florida 33602

Re: Judicial Qualifications Commission, Case No. 04-239
Richard H. Albritton, Jr.

Dear Scott:

Thank you for sending me the materials relating to the Judge Holloway matter, insofar as it may relate to Judge Albritton's request for the notes of witness interviews taken by Mr. Butler. I hope to get back to you shortly with the JQC's response.

Sincerely,



David T. Knight

*Special Counsel to the Judicial
Qualifications Commission*

DTK/lcc

cc: Thomas MacDonald, Esquire

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A
JUDGE: CYNTHIA A. HOLLOWAY
NO.: 00-143

Florida Supreme Court
Case No.: SC00-2226

EXHIBIT

Composite
F

_____/

MOTION TO COMPEL

COMES NOW, the HONORABLE CYNTHIA A. HOLLOWAY, by and through her undersigned counsel and hereby files this Motion to Compel requesting this Hearing Panel to order Special Counsel to produce the witness interviews conducted by the Judicial Qualifications Commission and in support sets forth the following arguments.

(1) Pursuant to Florida Judicial Qualifications Commission Rule 12(b), Judge Holloway, through her undersigned attorney, provided a written demand for the "names and addresses of all witnesses whose testimony the Special Counsel expects to offer at the hearing, together with copies of all written statements and transcripts of testimony of such witnesses in the possession of the counsel of the Investigative Panel which are relevant to the subject matter of the hearing and which have not previously been furnished." (See Demand for Rule 12(b) Materials, dated November 7, 2000, attached as Exhibit A).

(2) In response to Judge Holloway's request, Special Counsel Beatrice Butchko provided a list of nineteen potential witnesses, transcripts of testimony given by Judge Holloway, a deposition transcript of John Yaratch and witness affidavits originally submitted by Judge Holloway with her Answer to Notice of Investigation. In addition, Special Counsel provided a typed

written statement of Sharron K. Cosby dated March 3, 2000.

However, Special Counsel did not disclose any statements of the remaining JQC witnesses. (See Special Counsel's Potential Witness List and Catalogue of Sworn Statements and/or Transcripts, dated December 8, 2000, attached).

(3) Judge Holloway's undersigned attorney has been contacted by several of the witnesses listed by the JQC who have stated that they have spoken to JQC's representatives concerning the subject matter of these proceedings prior to the Investigative Hearing that took place on October 13, 2000. Consequently, on January 3, 2001, Judge Holloway again made a written request for disclosure of the remaining witness statements citing to Rule 12(b).

(4) In the Special Counsel's response dated January 16, 2001, she acknowledged that the JQC has possession of typed witness interviews conducted by its investigator. Moreover, Special Counsel conceded that these interviews or statements were given at the direction of Mr. Thomas C. MacDonald, Jr., who was acting as the General Counsel for the Investigative Panel in this proceeding. Due to the bifurcated nature of the JQC proceedings, Mr. MacDonald's authority to direct the investigator to interview witnesses extended only until his assignment of aiding the Investigative Panel in the filing of formal charges was completed. Consequently, these witness interviews were conducted for the purpose of considering whether formal charges should be filed against Judge Holloway.

Although these statements were, in large part, the basis for the formal charges, Special Counsel refused to comply with Judge Holloway's discovery request for witness statements.

Interestingly, Special Counsel did not reference or even address Florida Judicial Qualifications Commission Rule 12(b) when justifying her refusal. Instead, Special Counsel relied upon the discovery provisions contained in the Florida Rules of Civil Procedure.

(5) Contrary to the Special Counsel's analogies, the Florida Supreme Court has held, "discovery pursuant to rule 12(b) allows an accused judge to have full access to the evidence upon which formal charges are based." See In re Graziano, 696 So. 2d 744, 751 (Fla. 1997) (*emphasis added*). In fact, the Graziano Court determined that these liberal discovery rights justify the continuing confidentiality of the original complaint. See Id. at 751-752. The only exception to the accused judge's entitlement to full disclosure of the written statements are any statements contained in a document that is confidential under the Constitution of the State. Fla. Jud. Qual. Comm'n R. 12(b). Special Counsel has not contended that any of these documents are confidential. Therefore, the unequivocal language of Rule 12(b) mandates disclosure.

(6) Special counsel seeks to limit and qualify the term "statement" by making analogies to the Florida Rules of Civil Procedure and contending that the investigator's typed summaries are not statements according to the definition of "statement

previously made" found within Florida Rule of Civil Procedure 1.280(b)(3). This subsection pertains to a non-party's right to receive a copy of a statement previously made by that non-party or a party's right to receive a copy of a statement previously made by that party. However, since Florida Judicial Qualification Commission Rule 12(b) already provides for the appropriate scope of discovery and application of additional restrictions is contrary to the intent of the Florida Supreme Court, the Florida Rules of Civil Procedure are inapplicable to the specific issue before the Hearing Panel.

Moreover, Florida Rule of Civil Procedure 1.280(b)(3) concerns materials that were prepared in anticipation of civil litigation. In contrast, the statements that are sought to be disclosed in this prosecution were taken at the direction of the General Counsel to the Investigative Panel prior to the determination that Formal Charges would be filed. The witness interviews constitute the Judicial Qualifications Commission's investigation and evidence of the basis for the underlying charges rather than mere attorney work product undertaken in the anticipation of a trial. As such, Florida Rule of Civil Procedure 1.280(b)(3) should not be utilized to limit the holding of In re Graziano, 696 So. 2d 744 (Fla. 1997).

Assuming *arguendo* that the Hearing Panel finds it appropriate to apply the definition of "a statement previously made" found within Rule 1.280(b)(3) to Judicial Qualifications Commission investigations, the statements given to the JQC

investigator appears to meet criteria set forth in that subsection. Rule 1.280(b)(3) states in pertinent part the following:

For purposes of this paragraph, a statement previously made is a written statement signed or otherwise adopted or approved by the person making it, or a stenographic, mechanical, electrical, or other recording or transcription of it that is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

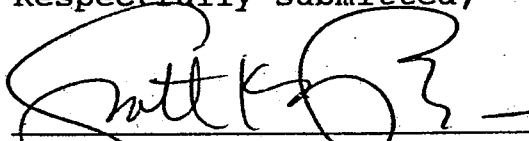
Special Counsel has explained that Mr. MacDonald's investigator took handwritten notes during the witness interviews and later typed them for the prosecution's review. By this explanation, the witness statements were "transcribed" by the investigator who presumably gave a "substantially verbatim recital" of their statements and took notes contemporaneously with the making of the statement. Accordingly, by the Special Counsel's own argument, the statements should be disclosed.

In any event, a rigid application of this Florida Rule of Civil Procedure 1.280(b)(3) definition to the disclosure of witness statements in JQC proceedings would encourage the ultimate circumvention of discovery obligations by a suggestion that the investigator refrain (at least contemporaneously) from taking notes of the witnesses statements. Not only would this practice prevent "full access to the evidence upon which the charges are based," but it would also create the substantial risk of submitting or arguing inaccurate witness statements to the Investigative Panel. See In re Graziano at 751. The ultimate goal of the discovery process in a JQC prosecution should not be

the manipulation of discovery obligations to hinder the defense; but rather, to provide complete and accurate disclosure to ensure the fair presentation of evidence.

WHEREFORE, and by reason of the foregoing, Respondent respectfully requests this Hearing Panel to enter an order compelling the Special Counsel to produce all witness interviews conducted by the Judicial Qualifications Commission investigator in accordance with Florida Judicial Qualification Commission Rule 12(b) and the rulings of the Florida Supreme Court.

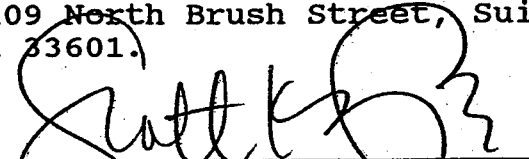
Respectfully submitted,



SCOTT K. TOZIAN, ESQUIRE
SMITH & TOZIAN, P.A.
109 North Brush Street, Suite 150
Tampa, Florida 33602
(813) 273-0063
FL Bar# 253510

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31 day of JAN, 2001, the original of the foregoing Motion to Compel has been furnished by U.S. Mail to: Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927 with copies by U.S. Mail to: Beatrice A. Butchko, Esquire, Kaye, Rose & Maltzman, LLP, One Biscayne Tower, Suite 2300, 2 South Biscayne Boulevard, Miami, Florida 33131; John Beranek, Esquire, General Counsel, Ausley & McMullen, Washington Square Building, 227 Calhoun Street, P. O. Box 391, Tallahassee, Florida 32302; Honorable James R. Jorgenson, Chair, Hearing Panel, Third District Court of Appeals, 2001 S.W. 117th Avenue, Miami, Florida 33175-1716; and Michael S. Rywant, Esquire, Rywant, Alvarez, Jones, Russo & Guyton, P.A., 109 North Brush Street, Suite 500, P. O. Box 3283, Tampa, Florida 33601.



SCOTT K. TOZIAN, ESQUIRE

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING JUDGE
THELMA A. HOLLOWAY, JRC
C.: 00-143,

SUPREME CT. CASE NO. SC00-2226

ORDER ON MOTION FOR PROTECTIVE ORDER AND TO COMPEL

The Motion for Protective Order of January 31, 2001, is denied and the depositions scheduled for February 26-28, 2001, shall proceed. The Motion to Compel of January 31, 2001, is also denied. This ruling is without prejudice to a post-deposition attempt to demonstrate "good cause" under Rule 12(b) and In re: HOLLOWAY, SUP. CT. NO. 794 (Fla. 1997).

SO ORDERED this 22nd day of February, 2001.

~~FLORIDA JUDICIAL QUALIFICATIONS~~
~~COMMISSION~~

By: 

Chairman, Hearing Panel,
Florida Judicial Qualifications
Commission
Room 102, The Historic Capitol
Tallahassee, Florida 32399-6000
904/488-1561
904/922-6781 (fax)

Copies furnished in accordance with the attached list.

IN THE SUPREME COURT OF FLORIDA

INQUIRY CONCERNING A
JUDGE: CYNTHIA A. HOLLOWAY
NO.: 00-143

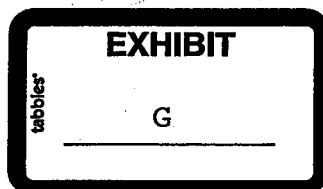
Florida Supreme Court
Case No.: SC00-2226

MOTION TO COMPEL

COMES NOW, the HONORABLE CYNTHIA A. HOLLOWAY, by and through her undersigned counsel and hereby files this Motion to Compel respectfully requesting the Florida Supreme Court to direct Special Counsel of the Judicial Qualifications Commission to adhere to Florida Judicial Qualifications Commission Rule 12(b) by disclosing witness statements taken by its investigator and any other evidence upon which formal charges are based.

(1) Pursuant to Florida Judicial Qualifications Commission Rule 12(b), Judge Holloway, through her undersigned attorney, provided a written demand for the "names and addresses of all witnesses whose testimony the Special Counsel expects to offer at the hearing, together with copies of all written statements and transcripts of testimony of such witnesses in the possession of the counsel of the Investigative Panel which are relevant to the subject matter of the hearing and which have not previously been furnished." (See Demand for Rule 12(b) Materials, dated November 7, 2000, attached as Exhibit A).

(2) In response to Judge Holloway's request, Special Counsel, Beatrice Butchko, provided a list of nineteen potential witnesses, transcripts of testimony given by Judge Holloway, a deposition transcript of John Yaratch and witness affidavits



originally submitted by Judge Holloway with her Answer to Notice of Investigation. In addition, Special Counsel provided a typed written statement purported to be of Sharron K. Cosby dated March 3, 2000. The statement is unsigned. However, Special Counsel did not disclose any statements of the remaining JQC witnesses. (See Special Counsel's Potential Witness List and Catalogue of Sworn Statements and/or Transcripts, dated December 8, 2000, attached as Exhibit B).

(3) On January 3, 2001, Judge Holloway again made a written request for disclosure of the remaining witness statements citing to Rule 12(b). (See attached as Exhibit C).

(4) In Special Counsel's response dated January 16, 2001, she acknowledged that the JQC has possession of typed witness interviews conducted by its investigator. (See attached as Exhibit D). Moreover, Special Counsel conceded that these interviews or statements were given at the direction of Mr. Thomas C. MacDonald, Jr., who was acting as the General Counsel for the Investigative Panel in this proceeding. However, Special Counsel refused to disclose the witness statements, citing to the discovery provisions contained in the Florida Rules of Civil Procedure. At least one listed witness, Detective Yaratch, has refused to voluntarily speak to counsel for Respondent. (See letter from Scott Tozian to Detective Yaratch dated February 15, 2001 and attached as Exhibit E).

(5) On January 31, 2001, Respondent filed a Motion to Compel with the Judicial Qualifications Commission Hearing Panel

requesting compliance with Florida Judicial Qualifications Commission Rule 12(b). (See Respondent's Motion to Compel, attached as Exhibit F).

(6) Judicial Qualifications Commission Special Counsel, Ms. Beatrice Butchko, served her response on February 15, 2001, claiming that the witness statements were protected by the "work product doctrine" and should not be disclosed pursuant to Florida Rule of Civil Procedure 1.280. (See Judicial Qualifications Commission's Response to Judge Cynthia A. Holloway's Motion to Compel, attached as Exhibit G).

This response fails to address or even reference Rule 12(b). The JQC's reliance on the Florida Rules of Civil Procedure to justify its refusal to provide witness statements is misplaced because Florida Judicial Qualification Commission's Rule 12(b) controls this issue. While the Florida Rules of Civil Procedure govern the majority of the procedure in Judicial Qualifications Commission proceedings, Rule 12, titled "Procedure," was specifically promulgated to address procedural discovery aspects that are unique to JQC prosecutions. One of these unique procedural requirements is the Special Counsel's obligation to disclose witness statements. Fla. Jud. Qual. R. 12(b).

The Florida Rules of Civil Procedure should not be read to modify or abrogate the Florida Judicial Qualifications Rules. In fact, Rule 12(a) creates an exception to the application of Florida Rules of Civil procedure when such an application is "inappropriate or otherwise provided in these rules." Since Rule

12(b) otherwise provides for the discovery obligation to disclose witness statements, it is inappropriate to apply or accept Special Counsel's discovery obligation argument under the Florida Rules of Civil Procedure.

(7) The Chairman of the Judicial Qualifications Hearing Panel denied Respondent's Motion to Compel on February 20, 2001.

(See Order on Motions for Protective Order and to Compel, attached as Exhibit H). The Order stated that its ruling was "without prejudice to a post-deposition attempt to demonstrate "good cause" under Rule 12(b) and In re: Graziano, 696 So. 2d 744 (Fla. 1997)."

(8) It is respectfully submitted that the Hearing Panel's Order is contrary to Florida Judicial Qualifications Commission Rule 12 and with a prior decision of the Florida Supreme Court. Fla. Jud. Qual. Comm'n R. 12(b); In re Graziano, 696 So. 2d 744 (Fla. 1997). In fact, this ruling evinces a misapplication of the plain language of Rule 12(b) by imposing a "good cause" showing requirement upon the judge where one does not exist.

(9) Rule 12(b) imposes an obligation on Special Counsel to "promptly" disclose upon written request:

The names and addresses of all witnesses whose testimony the Special Counsel expects to offer at the hearing, together with copies of all written statements and transcripts of testimony of such witnesses in the possession of the counsel or the Investigative Panel which are relevant to the subject matter of the hearing and which have not previously been furnished, except those documents confidential under the Constitution of the State. When good cause is shown this rule may be waived.

Fla. Jud. Qual. Comm'n R. 12(b) (*emphasis added*). Special Counsel acknowledges that the witness statements in her possession were provided to Mr. Thomas C. MacDonald, Jr., General Counsel, "for use in determining the existence of probable cause needed before the Formal Charges against Judge Holloway were filed." (See Judicial Qualifications Commission's Response to Judge Cynthia A. Holloway's Motion to Compel, p. 3, para. 4 [hereinafter JQC Response]). Since the witness statements are in the possession of Special Counsel and are relevant to the subject matter of the Judicial Qualifications Commission proceeding (i.e., the basis for formal charges), Rule 12(b) clearly mandates disclosure.

The unambiguous language of Rule 12(b) does not include any requirement that the responding judge establish "good cause." Rather, Rule 12(b) mandates Special Counsel provide these statements but allows for a waiver of the rule if "good cause" is shown. Judge Holloway is not seeking to waive Rule 12(b); Judge Holloway is requesting this Court to enforce the Special Counsel's discovery obligations under Rule 12(b). The "good cause" requirement falls upon Special Counsel to show why the statements should not be provided; no such showing was attempted, let alone made. Thus, the ruling that Respondent may show good cause in a post-deposition attempt to obtain this discovery is clearly erroneous and in fact, illogical. Neither timing considerations nor a showing of cause by Respondent are appropriate under Rule 12(b).

(10) Moreover, this Court has previously held that "discovery pursuant to rule 12(b) allows an accused judge to have full access to the evidence upon which formal charges are based." In re Graziano, 696 So. 2d 744, 751 (Fla. 1997). (emphasis added). In fact, the Graziano Court determined that these liberal discovery rights are necessary to counterbalance the continuing confidentiality of the original complaint. Id. at 751-752. Moreover, there is no indication that a responding judge show "good cause" in order to activate that judge's right to "full access to the evidence." See Id.

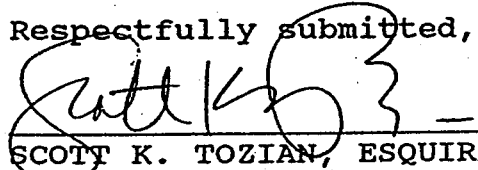
The only exception to the accused judge's entitlement to full disclosure of the written statements is any statement contained in a document that is confidential under the Constitution of the State. Fla. Jud. Qual. Comm'n R. 12(b). There is no allegation or any finding that the witness statements sought to be disclosed are confidential under Florida's Constitution.

(11) It is respectfully submitted that the search for truth is best served by compliance with Rule 12(b) which is to be broadly interpreted in favor of the production of these statements. It is incomprehensible that potentially exculpatory evidence may be shielded from discovery by the hearing panel's interpretation of Rule 12(b).

WHEREFORE, and by reason of the foregoing, the Honorable Cynthia A. Holloway respectfully requests this Court to enter an order compelling the Special Counsel to produce all witness

interviews conducted by the Judicial Qualifications Commission investigator in accordance with Florida Judicial Qualification Commission Rule 12(b) and the rulings of the Florida Supreme Court.

Respectfully submitted,



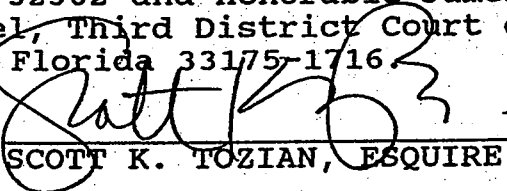
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Attorneys for the Honorable
Cynthia A. Holloway

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21 day of February, 2001, the original of the foregoing Motion to Compel has been furnished by UPS overnight delivery to: The Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927 with true and correct copies by U.S. Mail and facsimile transmission to: Beatrice A. Butchko, Esquire, Kaye, Rose & Maltzman, LLP, One Biscayne Tower, Suite 2300, 2 South Biscayne Boulevard, Miami, Florida 33131; and by U.S. Mail to John Beranek, Esquire, General Counsel, Ausley & McMullen, Washington Square Building, 227 Calhoun Street, P. O. Box 391, Tallahassee, Florida 32302 and Honorable James R. Jorgenson, Chair, Hearing Panel, Third District Court of Appeals, 2001 S.W. 117th Avenue, Miami, Florida 33175-1716.



SCOTT K. TOZIAN, ESQUIRE

Supreme Court of Florida

THURSDAY, FEBRUARY 22, 2001

CASE NO.: SC00-2226

Lower Tribunal No.:

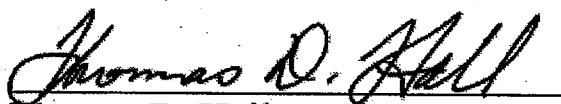
INQUIRY CONCERNING A
JUDGE,
NO. 00-143

RE: CYNTHIA A.
HOLLOWAY

Petitioner is hereby requested to file a response on or before February 23, 2001, at 10:00 a.m. to respondent's motion to compel and motion to stay.

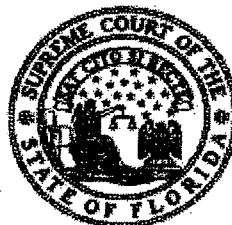
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Test:



Thomas D. Hall

Clerk, Supreme Court



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Served:

BEATRICE AVGHERINO BUTCHKO

THOMAS C. MACDONALD, JR.

SCOTT K. TOZIAN

MICHAEL S. RYWANT

HON. CYNTHIA A. HOLLOWAY, JUDGE

EXHIBIT

H

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A
JUDGE: CYNTHIA A. HOLLOWAY
NO.: 00-143

Florida Supreme Court
Case No.: SC00-2226

JUDICIAL QUALIFICATIONS COMMISSION'S MOTION IN OPPOSITION TO
JUDGE CYNTHIA A. HOLLOWAY'S MOTION TO COMPEL

JUDICIAL QUALIFICATIONS COMMISSION (hereinafter "JQC"), by and through the undersigned Special Counsel, and pursuant to Rules 12 and 21 of the Florida Judicial Qualifications Commission Rules, Rule 9.310 of the Florida Rules of Appellate Procedure and Rule 1.280(b)(3) of the Florida Rules of Civil Procedure, hereby respectfully submits its Motion in opposition to Judge Cynthia A. Holloway's Motion to Compel and requests this Honorable Court grant an Order Denying Judge Holloway's Motion to Compel, and in support thereof states as follows:

1. On October 26, 2000, the Investigative Panel of the JQC filed its Notice of Formal Charges against The Honorable Cynthia A. Holloway, Circuit Judge for the Thirteenth Judicial Circuit, alleging violations of Canons 1, 2, 3, and 5 of the Code of Judicial Conduct.
2. In accordance with Rule 12(b) of the Florida Judicial Qualifications Commission Rules the undersigned Special Counsel filed the names and addresses of nineteen potential witnesses, twelve of whom had been interviewed by the JQC's private investigator.
3. Subsequently, Mr. Scott Tonian, as counsel for Judge Holloway, filed a Motion to Compel any and all witness interview summaries authored by the JQC's private investigator, Mr.

EXHIBIT

I

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Robert Butler. In addition, Mr. Tozian filed a Motion for Protective Order seeking to halt the scheduled discovery deposition of Judge Holloway pending a decision regarding the requested witness interview summaries. Both Motions were filed with the JQC's Hearing Panel in accordance with Rule 7(b) of the Florida Judicial Qualifications Commissions Rules which sets forth the Hearing Panel's rules.

4. The JQC filed a response, opposing Judge Holloway's Motion to Compel and Motion for Protective order based on the following three propositions: 1) The requested witness summaries are not discoverable "statements" as defined in Rule 1.280(b)(3) of the Florida Rules of Civil Procedure. 2) The requested witness summaries were prepared in anticipation of litigation and as such, are protected by the work product doctrine. An Affidavit of the JQC's investigator, Robert Butler was filed evidencing the work product nature of the requested documents. (See Affidavit of Robert Butler, attached as Exhibit A). 3). Judge Holloway has failed to prove she is entitled to the JQC's work product by failing to state that she is unable without undue hardship to obtain the substantial equivalent of the requested materials by other means.

5. On or about February 20, 2001, the Honorable Judge James Jorgenson, Chairman of the Judicial Qualifications Commission Hearing Panel, entered an Order denying Judge Holloway's Motion to Compel and Motion for Protective Order, and further ordered that the subject depositions take place on February 26, 27 and 28, 2001, as scheduled.

6. On February 21, 2001, Mr. Tozian filed a second Motion to Compel the witness summaries with this Court, seeking a review of Judge Jorgenson's Order.

7. Judge Holloway's present Motion to Compel discovery is procedurally deficient

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by virtue of not being included among the list of appealable non-final orders enumerated in Florida Rules of Appellate Procedure 9.130(a) and therefore is not properly before this court and should be denied.

8. Based upon the following argument, the Court should deny the respondent's Motion to Compel the JQC's witness summaries.

ARGUMENT

I. The Hearing Panel's Order denying Judge Holloway's Motion to Compel does not automatically give rise to review before this Court

Rule 21 of the Florida Judicial Qualifications Commission Rules specifically provides ~~that the Florida Rules of Appellate Procedure shall apply for the review of Investigative and Hearing Panel proceedings by the Supreme Court.~~ In the present case, the Respondent's second Motion to Compel filed with the Supreme Court is tantamount to seeking an interlocutory appeal of the Hearing Panel's non-final Order denying her Motion to Compel. As such, the Respondent's Motion should be denied as not being included among the list of appealable non-final orders enumerated in Florida Rule of Appellate Procedure 9.130 (B).

It is widely held that non-final orders for which no enumerated right to appeal is provided under Rule 9.130 are reviewable only in very limited circumstances. *Martin-Johnson, Inc. v. Savage*, 509 So.2d 1097 (Fla. 1987). "Such orders must depart from the essential requirements of law, causing material harm to the petitioner throughout the remainder of the proceedings ...leaving the petitioner with no adequate remedy on appeal." *Id.*

Judge Holloway has failed to allege that the Hearing Panel's ruling "departed from the essential requirements of law" in denying her Motion to Compel and that she will suffer "material

harm" without the disclosure of the JQC private investigator's witness summaries. The respondent is easily able to conduct investigative interviews and depositions of each witness listed by the JQC, or in the alternative, has other discovery devices available to gain the desired information. Eighteen of the nineteen potential witnesses listed in the JQC's 12 (b) response are employed and/or reside in Tampa, Florida. Of the eighteen witnesses listed by the JQC, five work in the Hillsborough County Courthouse, one is Judge Holloway's husband, and the other is her brother. The remainder of the witnesses are either attorneys or employees associated in one way or another with the Hillsborough County criminal justice system and thus are easily accessible to the respondent. The only exception is Mr. Mark Johnson, the complaining witness, who is currently scheduled for deposition, on February 27th, 2001. Therefore, based on Florida Rule of Appellate Procedure 9.130, respondent's Motion should be denied as procedurally barred.

H. The Requested Documents Were Prepared In Anticipation of Litigation and are Protected by the Work Product Doctrine

Even if the Court determines that this matter has procedurally been raised in the proper forum, the JQC respectfully submits, in the alternative, that respondent's Motion to Compel the JQC's written interview summaries should be denied as non-discoverable work product.

In furtherance of the inquiry concerning Judge Holloway and in anticipation of the litigation herein, the JQC retained retired Federal Bureau of Investigations Special Agent Robert Butler, by written contract to locate and interview potential witnesses, as well as to document his findings and report to the JQC. (See letter of employment dated, May 16, 2000, attached as Exhibit B). During the course of the investigation, Mr. Butler took non-verbatim, hand written witness interview notes. Using his personal recollection and hand written notes, Mr. Butler

subsequently typed-up each witness interview summary which are the subject of respondent's Motion to Compel. The typed summaries were then provided to Mr. Thomas C. MacDonald, Jr., General Counsel for the JQC. (See, Sworn Affidavit of Robert Butler attached as Exhibit II.) Mr. Butler's written summaries are precisely the type of document intended for protection under the work product doctrine. The First District Court of Appeals has specifically held that "protection from discovery includes documents prepared in anticipation of litigation by or for a party, or by or for that party's representative..." *Procter & Gamble Co. v. Swilley*, 462 so.2d 1188, 1193 (Fla. 1st DCA 1985).

Furthermore, it is well settled that even though a party may be ordered to provide the names and addresses of individuals who have furnished statements in anticipation of litigation, (as required by Rule 12(b) "about rare and exceptional circumstances," *Surf Drugs, Inc. v. Vermette*, 236 So.2d 108, 113 (Fla. 1970), the party may not be required to furnish the statements themselves because such statements are work product. *Hickman v. Taylor*, 329 U.S. 495, 67 S.Ct. 385, 91 S.Ed. 451 (1947); *Miami Transit Co. v. Hurns*, 46 So.2d 390 (Fla. 1950), *Karch, MacKay*, 453 So. 2d 452 (Fla. 4th DCA 1984). In the present case, the respondent has failed to raise any "rare" or "exceptional" circumstances which warrant overruling the work product doctrine.

In addition, even though Mr. Butler's witness summaries were prepared before litigation formally commenced, the documents are still protected by the work product doctrine as long as there was a substantial possibility that litigation would occur. In *Barnett Bank v. Dottie-G Development*, 645 So.2d 573 (Fla. 2nd DCA 1994), the court held documents are subject to the work product privilege even when litigation is neither pending nor threatened, so long as there

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is a possibility that a suit might ensue. See *Anshor Nat'l Fin. Services, Inc. v. Smeltz*, 546 So.2d 760, 761 (Fla. 2d DCA 1989).

Interestingly, in paragraph 11 of respondents Motion to Compel, counsel for Judge Holloway states that "the search for truth is best served by compliance with Rule 12 (b) which is to be broadly interpreted in favor of the production of these statements." Special counsel respectfully disagrees with Mr. Tozian's view on how the search for truth is best served. Based on the Motion for Protective Order filed before the Hearing Panel and the Motion to Stay the respondent's deposition before the Florida Supreme Court, it is evident that the respondent wishes to appear for deposition only after she has learned the substance of each and every witness interview conducted by the JQC's private investigator. Common sense would indicate that the truth would best be served if one's adversary is not privy to one's investigative work product. The Third District Court of Appeals similarly held the rationale supporting the work product doctrine is that "one person is not entitled to prepare his case through the investigative work product of his adversary where the same or similar information is available through ordinary investigative techniques and discovery procedures." *DeBartolo-Aventura, Inc. v. Hernandez*, 638 So. 2d 908, 990 (Fla. 3rd DCA 1994); *Southern Bell Tel. & Tel. Co. v. Deason*, 632 So.2d 1377, 1385 (Fla. 1994).

III. The Florida Rules of Civil Procedure shall apply in all proceedings before the Hearing Panel

Rule 12 (a) of The Florida Judicial Qualifications Commission Rules, specifically provides that "In all proceedings before the Hearing Panel, the Florida Rules of Civil Procedure shall be applicable..." Accordingly, Rule 1.200 (b) (3) of the Florida Rules of Civil Procedure specifically

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provides that a party may obtain discovery of an opposing party's "documents ... prepared in anticipation of litigation...only upon a showing that the party seeking discovery has need of the material in preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means." (emphasis added) Opposing counsel has failed to establish the requisite showing that they are unable without undue hardship to obtain the substantial equivalent information by other means. As previously stated, each and every witness listed by the JQC (with the exception of the complaining witness, Mark Johnson) is either related to Judge Holloway, works with her or is in some way connected to the criminal justice system. By opposing counsel's own admission, they have already interviewed numerous witnesses listed by the JQC and thus have presumably learned the contents of the investigative interviews. (See Correspondence authored by Mr. Scott Tozian, dated January 3, 2001 attached as Exhibit C). In so doing, Mr. Tozian has diminished, if not eliminated, any argument in support of the "undue hardship" threshold requirement which must be met before the work product privilege can be overruled.

**IV. The JQC's Investigative Witness Summaries Are Not Statements
as Defined by Rule 1.280 (b) (3)**

Florida Rule of Civil Procedure 1.280 (b)(3) defines a statement for discovery purposes as "a written statement signed or otherwise adopted or approved by the person making it, or a stenographic, mechanical, electrical, or other recording or transcription of it that is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded." Pursuant to Mr. Butler's affidavit in the present case, the subject witness summaries are not a verbatim account of the witness interviews, but instead are a combination of Mr. Butler's

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interview notes and personal memory of the interview and thus not discoverable pursuant to Rule 1.280 (b) (3).

V. The JQC Has Fully Complied With Its Obligations Pursuant to Rule 12 (b) of the Judicial Qualifications Commission Rules

Rule 12 (b) of the Judicial Qualifications Commission Rules calls for the disclosure of:

The names and addresses of all witnesses whose testimony the Special Counsel expects to offer at the hearing, together with copies of all written statements and transcripts of testimony of such witnesses in the possession of the counsel or the Investigative Panel which are relevant to the subject matter of the hearing and which have not been previously furnished.

In this case, the JQC has fully complied with the requirements of Rule 12 (b) by providing the names and addresses of potential witnesses, as well as providing a copy of all transcribed statements, the one statement authored a witness, and affidavits.

WHEREFORE, the undersigned Special Counsel, on behalf of the JUDICIAL QUALIFICATIONS COMMISSION, hereby files its Motion in Opposition to Judge Cynthia A. Holloway's Motion to Compel, and respectfully asks this Honorable Court to enter and Order denying Judge Holloway's Motion to Compel the JQC investigative reports and witness summaries and order her to appear for deposition in furtherance of this cause.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail to: Honorable Thomas D. Hall, Clerk, Supreme Court of Florida 500 South Duval Street, Tallahassee, Florida 32399-1927; with copies by U.S. Mail and Facsimile to: Scott K. Tozian, Esquire, SMITH & TOZIAN, P.A., 109 North Brush Street, Suite 150, Tampa, Florida

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33602; Michael S. Rywant, Esq. RYWANT, ALVAREZ, JONES, RUSSO & GUYTON, P.A.,
109 N. Brush Street, Suite 500; John Beranek, Esquire, AUSLEY & McMULLEN, Washington
Square Building, 227 Calhoun Street, Tallahassee, Florida 32302; Honorable James R. Jorgenson,
Chair, Hearing Panel, Third District Court of Appeals, 2001 S.W. 117th Avenue, Miami, Florida
33175-1716; and Thomas C. MacDonald, Jr. General Counsel, JQC, COOK & MACDONALD,
100 N. Tampa Street, Suite 2100, Tampa, Florida 33602, this 28th day of February, 2001.

By: 

Beatrice A. Butchko, Special Counsel,
Judicial Qualifications Commission
KAYE, ROSE & MALTZMAN, LLP
One Biscayne Tower, Suite 2300
2 South Biscayne Boulevard
Miami, Florida 33131
Florida Bar # 0817163
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Supreme Court of Florida

FRIDAY, FEBRUARY 23, 2001

CASE NO.: SC00-2226

INQUIRY CONCERNING A
JUDGE,
NO. 00-143

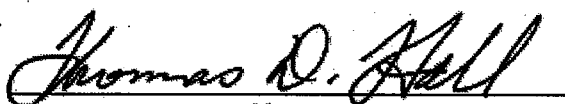
vs. RE: CYNTHIA A.
HOLLOWAY

Petitioner's Motion to Stay filed in the above styled cause is hereby denied without prejudice to refile before the Judicial Qualifications Commission.

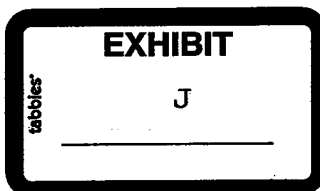
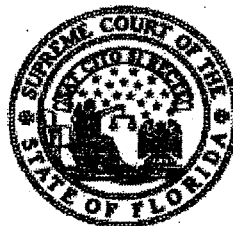
Petitioner's Motion to Compel is hereby granted only as to the statements used in determining probable cause. The Motion of the Judicial Qualifications Commission in Opposition to Judge Cynthia A. Holloway's Motion to Compel is hereby denied.

SHAW, HARDING, ANSTEAD, PAREINTE, LEWIS and QUINCE, JJ., concur.
WELLS, C.J., did not participate.

A True Copy
Test:



Thomas D. Hall
Clerk, Supreme Court



bh
Served:

BEATRICE AVGHERINO BUTCHKO
THOMAS C. MACDONALD, JR.
SCOTT K. TOZIAN
MICHAEL S. RYWANT
HON. CYNTHIA A. HOLLOWAY, JUDGE